

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6262**

**BILL NUMBER:** SB 93

**NOTE PREPARED:** Nov 30, 2011

**BILL AMENDED:**

**SUBJECT:** Habitual Substance Offender.

**FIRST AUTHOR:** Sen. Lanane

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** This bill excludes misdemeanor possession of marijuana from the habitual substance offender sentencing enhancement if the offense involved the possession of 30 grams or less. It also makes a technical correction.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures:** Information about offenders in Department of Correction (DOC) facilities with prior misdemeanor marijuana violations are not maintained by DOC. Consequently, the number of offenders who might be affected by this bill is not known, and potential savings cannot be determined.

During FY 2010, DOC reported that 140 offenders were committed to DOC with a habitual substance offender enhancement. Of these offenders, 5 were sentenced for possession of marijuana as a Class D felony, while one offender was sentenced for dealing marijuana. All other offenders sentenced with a habitual substance offender enhancement were convicted of another crime involving drugs or driving while intoxicated.

To illustrate the potential impact this bill might have, LSA compared the fixed term of incarceration of offenders who were committed to DOC in CY 2010 with habitual substance abuse offender enhancements with those offenders who were sentenced to DOC for the same type of crime but with no habitual substance offender enhancements.

<b>Offenders Committed to DOC in CY 2010 with Habitual Substance Offender Enhancement</b>				
<b>Felony Class</b>	<b>Offenders with Habitual Substance Abuse Enhancement</b>	<b>Average Sentence (In Years)<sup>1</sup></b>	<b>Average Sentence Without Enhancement<sup>1,2</sup></b>	<b>Difference<sup>1</sup></b>
FA	2	52.5	21.1	31.4
FB	22	17.7	7.7	10
FC	10	7.6	3.4	4.2
FD	106	4.6	1.3	3.3
Total	140	7.6	3.4	4.2
<sup>1</sup> Sentence in years.				
<sup>2</sup> Offenders sentenced to DOC for same crime without substance abuse enhancement.				

**Background** – Indiana Code 35-50-2-10(b) authorizes the state to “seek to have a person sentenced as a habitual substance offender for any substance offense by alleging . . . that the person has accumulated two prior unrelated substance offense convictions.” A “substance offense” includes a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation or manufacture of alcohol or drugs is an element of the crime. If a person who has been convicted of violating IC 9-30-5 (operating a vehicle while intoxicated) as either the current or a past crime, then they may also receive a habitual substance abuse enhancement.

The enhancement is an additional fixed term of between 3 and 8 years in prison.

The average expenditure to house an adult offender was \$18,836 in FY 2011. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,317 annually, or \$9.09 daily, per prisoner.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:**

**Information Sources:** DOC Offender Information System.

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